

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

MANAGERS OF THE BOSTON PORT AND  
SEAMEN'S AIDE SOCIETY

Employer

and

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES & PILOTS, ILA, AFL-CIO

Petitioner

Case 1-RC-21646

**DECISION AND DIRECTION OF ELECTION<sup>1</sup>**

The International Organization of Masters, Mates & Pilots (Union) seeks to represent a bargaining unit of “managers on duty”<sup>2</sup> and housekeeping employees employed by the Managers of the Boston Port and Seamen’s Aide Society (Employer) at Mariners House in Boston, Massachusetts, which provides lodging and meals to seafarers and retired seafarers. The Employer seeks to include a maintenance and kitchen utility employee, Mike Madore; the Union seeks to exclude Madore from the unit, asserting first that he is an unpaid volunteer rather than a statutory employee, and second that he lacks a

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<sup>1</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) as more fully discussed infra, the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>2</sup> Managers on duty are also referred to as front desk employees or desk clerks.

community of interest with the unit employees. The Employer also seeks to include in the unit a chef and cook, whom the Union would exclude for lack of community of interest with the petitioned-for employees. Finally, the Union seeks to exclude housekeeping supervisor Edith Chiarenza and chef Vinnie Perez as statutory supervisors,<sup>3</sup> while the Employer maintains that they should be included as nonsupervisory employees.<sup>4</sup>

I find that the maintenance and kitchen utility employee, Madore, is a statutory employee and that he has a sufficient community of interest with the petitioned-for employees to warrant his inclusion in the unit. I further find that the chef and the cook do not share a sufficient community of interest to require their inclusion in the unit, making it unnecessary to resolve the question of the chef's supervisory status. Finally, I find that the housekeeping supervisor is not a statutory supervisor and shall include her in the unit.

### **The Hearing Officer's rulings concerning the Union's subpoena duces tecum**

Prior to the hearing, the Union subpoenaed various documents from the Employer. In response to the subpoena, the Employer produced an organization chart, job descriptions for the managers on duty, and the Mariners House Employee and Employment Policy Guide. The Employer submitted a petition to revoke the subpoena as to the rest of the documents, which the hearing officer granted at the hearing. In its post-hearing brief, the Union asserts that the hearing officer erred in failing to order the Employer to produce the remaining job descriptions, performance evaluations, shift change forms, and certain manuals. The Union requests that if I find that the Union has not met its burden of proving that the maintenance employee is not a statutory employee or that the housekeeping supervisor and chef are statutory supervisors, I should reopen the record and require the Employer to provide the documents.

I affirm the hearing officer's ruling on the Employer's petition to revoke the Union's subpoena.<sup>5</sup> With respect to the job descriptions, the Employer's position is that there are none in existence other than the ones produced, and the testimony at the hearing, though perhaps somewhat confusing, does not establish otherwise. In any event, job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight, as the Board insists on evidence supporting a finding of actual as opposed to mere paper authority. In Re Training School at Vineland;<sup>6</sup> Chevron

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<sup>3</sup> The Union did not take the position that Perez is a statutory supervisor until the close of the hearing.

<sup>4</sup> The Employer also contends that if I find that the chef and housekeeping supervisor are statutory supervisors, I must find that the managers on duty are also statutory supervisors.

<sup>5</sup> I note that the Union's complaint as to documents needed to prove the supervisory status of the chef is moot, as I have excluded him from the unit on another ground.

<sup>6</sup> 332 NLRB 1412, cite and P. D. Dis. of Election at 1416 (2000).

U.S.A., Inc.<sup>7</sup> Additionally, the record created at the hearing on this issue, consisting primarily of the testimony of the Employer's executive director, Michael Cicalese, regarding the duties of the employees in question, was sufficient for me to make a determination as to their supervisory status. Nor was a job description necessary in order to determine the employee status of the maintenance employee, as there was adequate testimony as to the nature of his compensation and the actual work performed by him.

With respect to the performance evaluations and shift change forms, Cicalese testified that he is the only person who prepares written evaluations and who signs the shift change forms. The Union introduced a blank shift change form, but presented no witnesses or other evidence to suggest that either the housekeeping supervisor or chef have ever completed performance evaluations or shift change forms.<sup>8</sup> Under these circumstances, I find insufficient basis to warrant the production of the performance evaluations<sup>9</sup> and shift change forms. Burns International Security Services;<sup>10</sup> Elite Protective & Security Services, Inc.;<sup>11</sup> Millsboro Nursing & Rehabilitation Center.<sup>12</sup>

Finally, the Union asserts that the hearing officer erred in failing to compel production of certain manuals referred to in the job descriptions for the managers on duty as a guide in conducting their duties. On their face, some of them, such as the Mariners House Eligibility Policy, Mariners House Fire Safety Plan, and Mariners House Guest Emergency Information Booklet, appear to have no bearing on the employee status of the maintenance employee or the supervisory status of the housekeeping supervisor. As for the rest, an Employee Operating Manual, Mariners House Rules and Regulations, Memos from the Executive Director, and Standards and Performance Memo of August 1, 1999, in the absence of testimony from a witness that these documents would provide relevant information, I also find insufficient basis to warrant their production. I also note that there was adequate testimony from Cicalese as to the issues litigated in this matter. Accordingly, I affirm the hearing officer's ruling.

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<sup>7</sup> 309 NLRB 59, ALJD at 69 (1992).

<sup>8</sup> In fact, the Union presented no witnesses at the hearing. Cicalese was the only witness.

<sup>9</sup> Apart from providing evidence of supervisory status, the Union asserts that the performance evaluations would presumably have contained information as to the duties of each employee. As noted above, there was sufficient record evidence of their duties based on the testimony of Michael Cicalese.

<sup>10</sup> 278 NLRB 565, 565-566 (1986).

<sup>11</sup> 300 NLRB 832, 833 fn. 4 (1990).

<sup>12</sup> 327 NLRB 879, fn. 2 (1999).

### **Employee status of the maintenance employee**

Mariners House is a charitable organization that provides lodging and meals to seafarers and retired seafarers from the Merchant Marine, U.S. Coast Guard, and U.S. Navy. Mike Madore is a maintenance worker and kitchen utility worker for Mariners House. Madore showed up at Mariners House in November 2002 in need of a place to stay, but had no money. The executive director of Mariner House, Michael Cicalese, made an arrangement with him under which he works for the Employer in exchange for room and board at Mariners House.<sup>13</sup> Cicalese testified that the value of Madore's compensation is about \$65 to \$85 a day. The Employer did not give Madore a 1099 form to report his 2002 compensation for income tax purposes. Cicalese testified that he considers Madore to be a "non-exempt" employee under the Mariners House classification system, but he does not receive overtime pay.

Madore is present at Mariners House about 70 hours a week. Unlike the other employees, Madore does not punch a time clock and does not work a particular schedule. He receives room and board regardless of how many hours he works. Cicalese gives Madore a list of tasks, and Madore checks them off, noting when they were performed and how many hours it took. He also reports his time verbally to Cicalese. Cicalese keeps a record of Madore's hours and reports the information to Mariners House accountants. In addition to his work at Mariners House, Madore works as a handyman on a free-lance basis.<sup>14</sup> He clears such work with Cicalese first, and completes his work for Mariners House at night if he is working elsewhere during the day.

The Union asserts that Madore, who is not on the Employer's payroll, is not an employee within the meaning of the Section 2(3) of the Act, but rather, a beneficiary of the Employer's charitable work who is required to offset some of the cost of the charity provided to him. I find, however, that he is a statutory employee who provides services to the Employer in exchange for compensation.

The Board has held that there must be at least a rudimentary economic relationship between employee and employer in order to make a finding of employee status. WBAI Pacific Foundation;<sup>15</sup> Seattle Opera Association.<sup>16</sup> The Board has never squarely addressed the issue of whether an employee who receives substantial in-kind

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<sup>13</sup> Their initial agreement was that Madore would stay through the winter. He performed so well that Cicalese kept him on beyond the winter. Madore is currently contemplating whether or not he will continue working for Mariners House, but he currently has no set departure date.

<sup>14</sup> For example, Madore recently worked full-time for Boston Ship Repair for almost a week during the day.

<sup>15</sup> 328 NLRB 1273 (1999).

<sup>16</sup> 331 NLRB 1072 (2000).

compensation, but no monetary compensation, is a statutory employee.<sup>17</sup> In WBAI Pacific Foundation, however, the Board, citing the Supreme Court's decision in Town and Country Electric,<sup>18</sup> noted that

The ordinary dictionary definition of employee includes any "person who works for another in return for financial or other compensation." (emphasis supplied).

In declining to find that the unpaid volunteers in that case were not statutory employees, the Board noted that they received no wages or fringe benefits.<sup>19</sup> (emphasis supplied).

I find that Madore's receipt of room and board, valued at \$65 to \$85 per day, is simply another type of compensation and that there is a sufficient economic relationship between him and the Employer to warrant a finding of employee status.<sup>20</sup> In reaching this conclusion, I also note, by analogy, that in unfair labor practice cases, the Board includes the value of employer-provided room and board both for purposes of calculating gross backpay owed to a discriminatee and for purposes of calculating the value of interim earnings to be deducted from backpay. Colorado Forge Corp.<sup>21</sup> (interim earnings); Amshu Associates;<sup>22</sup> and Pierre Pellaton Enterprises<sup>23</sup> (gross backpay). See also NLRB Casehandling Manual (Part Three), Compliance Proceedings, at Sections 10535.7 and 10541.5, under which the value of housing and meals are included in gross backpay and interim earnings determinations.

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<sup>17</sup> In Seattle Opera Association, for example, the "auxiliary choristers" at issue received monetary compensation for each performance, albeit a small amount. The Board found that the small amount of money was compensation for their work and that they were, therefore, employees.

<sup>18</sup> 516 U.S. 85, 90 (1995).

<sup>19</sup> In WBAI, the unpaid staff occasionally received travel reimbursement and were eligible for a child care allowance, although there was no evidence that any unpaid staff had ever received the child care allowance. Under those circumstances, the Board found that there was insufficient evidence that the unpaid staff received compensation for their work.

<sup>20</sup> While the Board has made it clear that cases under the Fair Labor Standards Act are not controlling, it has noted that the Supreme Court found that individuals who received no cash but received benefits such as food, clothing, shelter, and medical benefits in exchange for their services were employees for purposes of coverage by the FLSA. See WBAI Pacific Foundation, supra, at 1275, fn. 3, and Seattle Opera Association, supra at 1074, fn. 4, citing Tony & Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290 (1985).

<sup>21</sup> 285 NLRB 530, 542 (1987).

<sup>22</sup> 234 NLRB 791, 795-796 (1978).

<sup>23</sup> 222 NLRB 555, 557 (1976).

## **The appropriate unit**

### **Background**

As noted above, Mariners House provides lodging and meals to seafarers. The facility has five floors and 22 guest rooms, as well as a kitchen, dining room, and front desk area.

Michael Cicalese, the executive director of Mariners House,<sup>24</sup> is in charge of overall operations, including marketing, budgeting, payroll, personnel matters, facility maintenance, dining services, and housekeeping. Cicalese works over 50 hours a week, with no set schedule. At Mariners House, the Employer employs six managers on duty, a chef, a cook, a maintenance/kitchen utility employee, a housekeeping supervisor, a housekeeper, and a bookkeeper.<sup>25</sup>

### **The petitioned-for employees**

Six managers on duty cover the front desk operation at Mariners House 24 hours a day. Three of them are full-time employees and three of them work on a part-time basis. The managers on duty work in three shifts, 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m. There is one manager on duty for each shift, and the six of them rotate between the various shifts. The managers on duty are responsible for determining if prospective guests are qualified to stay at Mariners House and checking guests in and out. The manager on duty on the night shift also conducts hourly security checks, puts out new time cards on a weekly basis, disposes of trash on the first floor, prepares a night audit report, prepares a folder for each guest for the following day, prepares a continental breakfast for guests, and sanitizes the coffee pots.

Housekeeping supervisor Edith Chiarenza and housekeeper Rosa DiMeo clean the guest rooms. The managers on duty notify the housekeepers as to which rooms must be cleaned as a result of guests checking in or out. Chiarenza works from 7 a.m. to 3 p.m., and DiMeo works from 9 a.m. to 5 p.m. The two cover for one another on their days off.

### **The maintenance employee**

Madore's duties include washing and buffing floors, cleaning the front rooms, bringing dumpsters out to the street, and shoveling and salting the front walk. He cleans up the conference room and sets up tables and chairs for meetings. He recharges the elevator, paints windowsills, repairs the toilets, sinks, and towel racks, maintains the

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<sup>24</sup> The parties have stipulated, and I find, that Cicalese is a statutory supervisor and/or manager who should be excluded from any unit found appropriate.

<sup>25</sup> The parties have stipulated, and I find, that bookkeeper Rich Wong shall be excluded from any unit found appropriate.

boiler room, changes filters in the heating and air conditioning units, and responds to complaints regarding room temperature.

Madore sometimes works side-by-side with the housekeepers, and some of his work overlaps with theirs. The housekeepers ask him to turn mattresses over, to move beds away from the wall, and to clean air vents. He vacuums guest rooms, stairs, and hallways and washes down baseboards. Both the housekeepers and Madore clean the kitchen. Madore will clean a room if the housekeepers have left for the day and it is needed for a guest.

On about two thirds of the evening shifts, Madore covers for the manager on duty by answering the phone while he or she is away from the desk. Managers on duty have sometimes performed some of Madore's duties, such as repairing a toilet, repairing a towel bar, taking out the garbage, and cleaning the microwave, but the record does not reflect how often this occurs. As noted above, Madore does not punch a time clock like the other employees and does not work a particular schedule.

#### The chef and the cook

Chef Vinnie Perez and cook Richard Perez work in the kitchen cooking meals for the guests. The chef creates the menu and orders the food. Vinnie Perez works about 45 hours per week, seven days a week, anytime between 6 a.m. and 7 p.m. Richard Perez, who is Vinnie's son, works about 25 hours per week. He cooks breakfast Monday through Friday, works all day on Mondays, and also covers for Vinnie when he needs a day off.

Guests at Mariners House pay the manager on duty for a meal ticket, which the guest gives to the chef or cook. The chef and cook ordinarily prepare meals for 12 guests. The managers on duty notify the chef and cook if they need to prepare food for additional guests. They may tell the chef or cook if a guest has a complaint about a meal. If a guest requests a meal after the kitchen closes at 7 p.m., the manager on duty may microwave a meal that the chef and cook have left or order food from a restaurant for the guest. One of the managers on duty, Don Timmins, cooked breakfasts for about three months in the summer of 2001, but no longer does so. The chef and cook may perform some of the housekeepers' or maintenance employee's duties if they are not available, such as bringing a cot to a guest room, plunging a toilet, or freeing a jammed window or window shade for a guest, but the record does not reveal how often this occurs.

#### Working conditions and other factors

The managers on duty, housekeepers, maintenance employee, chef, and cook<sup>26</sup> all report to Cicalese. There is no evidence of any transfers between positions. Managers on duty, housekeepers, the chef, and the cook are all hourly paid. The managers on duty

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<sup>26</sup> For the reasons set forth below, I note that it does not appear that the chef is the statutory supervisor of the cook.

earn \$9 to \$14 per hour, the housekeepers earn \$12 to \$13.50 per hour, and the chef and cook earn \$10 to \$15 per hour. As noted above, the maintenance employee receives room and board, but no cash compensation.

The Mariners House Employee and Employment Policies Guide applies to all employees. Only full-time employees are eligible for benefits such as health, dental, and life insurance, a retirement plan, paid vacation days, and personal days. Cicalese testified that Richard Perez, as a part-time employee, does not qualify for benefits, and it appears that the three part-time managers on duty would not be eligible for benefits either. Cicalese testified that Madore has been offered fringe benefits, but declined to accept them. Employees, including part-time employees such as Richard Perez, have received a bonus, while Madore has not received a bonus.

### Conclusion

The Act allows a union to petition for an appropriate unit, and does not require it to seek the most appropriate unit, even when a different unit than that petitioned-for might be more appropriate than the one it seeks. Omni International Hotel of Detroit.<sup>27</sup> The Board makes unit determinations in the hotel-motel industry on a case-by-case basis, using the same traditional community-of-interest criteria used in other industries. Id. In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. Overnite Transportation Co.<sup>28</sup> The Petitioner's desire as to the unit is a relevant consideration, though not dispositive. Florida Casino Cruises.<sup>29</sup>

In applying this standard in the hotel industry, the Board has found that “white collar” employees (front desk and clerical employees) do not share a sufficient community of interest with the hotel’s “blue collar” workforce (manual/physical service employees) to mandate their inclusion in an overall unit, noting primarily the differences in the nature of their duties. Thus, in Dinah’s Hotel & Apartments,<sup>30</sup> the Board held that a petitioned-for unit of front desk clerks was appropriate and need not include housekeeping and maintenance employees. Conversely, in Holiday Inn City Center,<sup>31</sup> the Board found that a petitioned-for unit of housekeeping, laundry, food, and beverage

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<sup>27</sup> 283 NLRB 475 (1987).

<sup>28</sup> 322 NLRB 723, 724, (1996), citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

<sup>29</sup> 322 NLRB 857, 858 (1997), citing Airco, Inc., 273 NLRB 348 (1984).

<sup>30</sup> 295 NLRB 1100 (1989).

<sup>31</sup> 332 NLRB 1246 (2000).



employees must include maintenance employees, but need not include front desk employees.

Here, unlike the case in Dinah's Hotel & Apartments, the Union seeks a mix of “white collar” and some, but not all, of the “blue collar” employees. I note, at the outset, that in light of the employees’ common supervision by the executive director, common personnel policies, and similar pay and benefits, the overall unit sought by the Employer would be an appropriate unit for bargaining. It is not, however, the only appropriate unit.

I find that the smallest appropriate unit must include the maintenance employee, but need not include the chef and cook. I recognize that the maintenance employee has somewhat different working conditions from the petitioned-for employees, in that he is compensated in-kind, works no set hours, and does not punch a time clock. I find those factors to be outweighed, however, by the fact that he regularly works side-by-side with the housekeepers and that some of their cleaning duties overlap. Holiday Inn City Center<sup>32</sup> (including maintenance engineers who are responsible for certain cleaning functions which are similar to the duties of the petitioned-for housekeeping employees). Further, Madore regularly covers for the manager on duty by answering the phone while the manager on duty is away from the desk.

In contrast, the duties of the chef and cook, who order food and prepare meals, are completely different in nature from those of the managers on duty and housekeepers sought by the Union, and there is, at best, only infrequent temporary interchange. Although one of the managers on duty used to prepare breakfast for guests, that has not been the case for two years. The remaining interchange, such as the cooks bringing a cot to a guest room, occurs only when the housekeepers and maintenance employee are not available. See, Stanford Park Hotel<sup>33</sup> (other employees, including food service employees, excluded from a petitioned-for unit of housekeeping and maintenance employees, where it was not uncommon for employees in other classifications to perform housekeeping and maintenance functions, but it typically occurred when the housekeepers and maintenance employees were off duty and the hotel was particularly busy, and did not appear to occur on a frequent basis).

### **Supervisory status of the housekeeping supervisor**

Cicalese testified that Chiarenza is a supervisor in the sense of “dishing out the work” to DiMeo. The manager on duty gives Chiarenza a list of rooms to clean, and Chiarenza assigns some rooms to DiMeo. Chiarenza generally cleans the guest rooms on the fourth and fifth floors, and DiMeo generally cleans the rooms on the second and third floors. Chiarenza may direct DiMeo to clean rooms on a different floor in order to equalize the work. Cicalese also testified that the two women agree what to do. If DiMeo is not busy, she will help clean the floors on the fourth and fifth floors and vice

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<sup>32</sup> Supra at 1255-1256.

<sup>33</sup> 287 NLRB 1291 (1988).

versa. If Chiarenza is busy when DiMeo arrives, the manager on duty may relay to DiMeo which rooms Chiarenza wants her to clean.

Cicalese testified generally that Chiarenza has no role in hiring, layoff, recall, promotions, or grievances. DiMeo used to report to Chiarenza for purposes of grievances. Within three months of Cicalese's arrival,<sup>34</sup> however, he changed that reporting relationship because of problems between the two housekeepers, so that both of them now report to Cicalese. Mariners House maintains an "Employee and Employment Policies Guide" under which employees who have a grievance are expected to speak with their immediate supervisor and the executive director and file written reports with them.<sup>35</sup> Nonetheless, Cicalese testified that because of this changed reporting relationship, DiMeo now reports grievances only to Cicalese, and he is her immediate supervisor for purposes of that provision.

Cicalese testified that he sets the housekeepers' schedules. The Employee and Employment Policies Guide states, in a section regarding housekeeping and maintenance personnel, that personnel requesting a shift change must get the approval of their immediate supervisor or the executive director. In keeping with that provision, Mariners House employees use a "shift change request" form that states that the form is to be reviewed and signed by their supervisor and the executive director. Nonetheless, Cicalese testified that Chiarenza may not approve a shift change for DiMeo and that he is the only individual who signs shift change request forms.

Cicalese testified that he performs written evaluations of full-time employees. There was no specific evidence regarding who performs DiMeo's evaluations or the consequences of written evaluations.

Cicalese testified that Chiarenza has no authority to discipline or fire employees. Cicalese testified that he has fired four to five employees and issued half a dozen warning letters or probationary periods to employees. He has issued several warnings to DiMeo. In February 2003, Chiarenza handed him a note in which she claimed she was being harassed by DiMeo. Cicalese met with both women to discuss the incidents described in the note and then issued a warning letter to DiMeo. In March 2003, Cicalese gave DiMeo a 60-day probationary period for failing to do her job and for a "boisterous" exchange with Chiarenza in front of guests. There is no evidence regarding the role Chiarenza played in his determination to put DiMeo on probation.

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use

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<sup>34</sup> Cicalese has been the executive director since October 2000.

<sup>35</sup> Cicalese revised the Guide in October 2001, after the change in the housekeepers' reporting relationship.

of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.<sup>36</sup> The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. New Fern Restorium Co.<sup>37</sup> The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care<sup>38</sup> The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.<sup>39</sup>

I conclude that the Union has failed to demonstrate that Chiarenza possesses Section 2(11) authority. The Union asserts that Chiarenza is a statutory supervisor by virtue of her authority to assign work to and responsibly direct DiMeo. There is no evidence that Chiarenza exercises statutory authority in assigning work to DiMeo. DiMeo generally cleans the rooms on the same two floors every day. Although Chiarenza may direct DiMeo to clean rooms on a different floor in order to equalize the work between them, the Board has held that assignments made to equalize employees' work are routine and do not require the exercise of independent judgment. Byers Engineering Corp.<sup>40</sup>

The Union also contends that Chiarenza has authority to adjust grievances and approve schedule changes. In this regard, it concedes that Cicalese stripped her of authority to adjust grievances and to approve schedule changes as to DiMeo, because of personal clashes between them, but asserts that Chiarenza was not stripped of her authority completely. Assuming that is the case, I note that no employees other than DiMeo report to Chiarenza, and there is no evidence that the Employer intends to hire any other housekeepers. I decline to find that Chiarenza has supervisory authority over hypothetical housekeepers that may be hired in the future. Further, there is no evidence as to what types of grievances Chiarenza was or will be authorized to resolve or has ever resolved on behalf of the Employer.<sup>41</sup>

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<sup>36</sup> 273 NLRB 1677, 1689 (1985).

<sup>37</sup> 175 NLRB 871 (1969).

<sup>38</sup> 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

<sup>39</sup> 308 NLRB 101, 102 (1992).

<sup>40</sup> 324 NLRB 740, 741 (1997).

<sup>41</sup> Because I have determined to exclude the chef and cook from the unit, I need not reach the issue of the supervisory status of the chef. I note, however, that it does not appear from the record that the chef possesses Section 2(11) supervisory status. The Union asserts that Vinnie Perez has authority to assign and direct the work of Richard Perez and to effectively recommend shift changes. There is no record evidence regarding the nature of Vinnie's assignment of work to his father or direction of his work. With respect to shift changes, Cicalese posts the chef's and cook's schedules on a board. When Vinnie Perez needs time off, he asks his father Richard to

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time managers on duty, housekeepers, and the maintenance employee employed by Managers of the Boston Port and Seamen's Aide Society at Mariners House in Boston, Massachusetts, but excluding the bookkeeper, the chef, the cook, all other employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Organization of Masters, Mates & Pilots, ILA, AFL-CIO.

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take his shift. Cicalese testified that the two are "pretty autonomous" about their schedules. When Vinnie Perez tells him about a change, Cicalese approves it and posts it. The fact that Vinnie may ask his father if he is willing to cover his shift does not establish supervisory status, in the absence of evidence that Vinnie has authority to compel his father to do so. The Union also asserts that Vinnie Perez is a statutory supervisor because he orders the food for the kitchen without interference from Cicalese. While ordering supplies may, in some circumstances, be evidence of managerial authority, it is not an indicium of supervisory authority.

## **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.;<sup>42</sup> NLRB v. Wyman-Gordon Co.<sup>43</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.<sup>44</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before July 10, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 17, 2003.

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Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 3rd day of July, 2003.

177-2414-6600  
177-8580-7000  
393-4060-6700  
440-1760-7801  
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<sup>42</sup> 156 NLRB 1236 (1966).

<sup>43</sup> 394 U.S. 759 (1969).

<sup>44</sup> 315 NLRB 359 (1994).